

APPENDIX

(Excerpts from the Court of Criminal Appeals' Decision)

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
May 15, 2001 Session

STATE OF TENNESSEE v. JERRY RAY DAVIDSON

**Direct Appeal from the Criminal Court for Dickson County
No. CR2232 Allen Wallace, Judge**

No. M1998-00105-CCA-R3-CD - Filed January 7, 2002

OPINION

The appellant, Jerry Ray Davidson, was found guilty by a jury of premeditated first degree murder and aggravated kidnapping. Thereafter, the jury sentenced the appellant to death based upon the finding of three aggravating circumstances: the appellant had previously been convicted of one or more violent felonies; the murders were knowingly committed while the appellant was engaged in committing a felony, i.e., aggravated kidnapping; and the appellant knowingly mutilated the body of the victim after death. The appellant received a consecutive twenty year sentence for the kidnapping conviction. On appeal, the appellant raises the following issues:

- (1) Whether the trial erred when it denied the appellant's motions to change venue, strike the venire and grant additional peremptory challenges;
- (2) Whether the evidence is sufficient to sustain the convictions;
- (3) Whether a witness for the prosecution should have been allowed to offer opinion testimony;
- (4) Whether the trial court correctly instructed the jury about the unanimity of its verdict;
- (5) Whether the jury's verdict is proper;
- (6) Whether the prosecutor has unlimited discretion in seeking the death penalty;

- (7) Whether the death penalty is imposed in a discriminatory manner; and
- (8) Whether Tennessee courts employ an adequate proportionality review.

Having thoroughly considered all of these issues and having fully reviewed the appellate record in this case, we affirm the convictions and the sentence of death imposed for first degree murder.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court is Affirmed.

JERRY L. SMITH, J., delivered the opinion of the court, in which NORMA MCGEE OGLE, and JOHN EVERETT WILLIAMS, JJ., joined.

Brock Mehler, Nashville, Tennessee (appeal only); Michael J. Love (trial and appeal); Collier W. Goodlett, Clarksville, Tennessee (trial only), for appellant, Jerry Ray Davidson.

Paul G. Summers, Attorney General & Reporter; Michael E. Moore, Solicitor General; Alice B. Lustre, Assistant Attorney General; Dan Alsobrooks, District Attorney General, for appellee, State of Tennessee.

OPINION

[DELETED: FACTS]

ISSUES

[DELETED: I. VENUE AND JURY COMPOSITION]

[DELETED: II. SUFFICIENCY OF THE EVIDENCE]

[DELETED: III. TESTIMONY OF DARLA HARVEY]

IV. INSTRUCTION ON UNANIMITY OF VERDICT

Next, the appellant argues that the trial court's instruction to the jury that it must unanimously agree in order to impose a life sentence while declining to give an instruction on the effect of a non-unanimous verdict is misleading and coercive and injects arbitrariness into sentencing. As the state correctly observes, the appellant has waived this issue by failing to object to the instruction during trial. See Tenn. R. App. P. 36(a). Moreover, the supreme court has repeatedly held that a jury instruction that the jury must unanimously agree in order to impose a life sentence without an instruction regarding the effect of a non-unanimous verdict does not offend constitutional standards. See State v. Keen, 31 S.W.3d 196, 233 (Tenn. 2000); State v. Cribbs, 967 S.W.2d 773, 796 (Tenn. 1998); State v. Brimmer, 876 S.W.2d 75, 87 (Tenn. 1994); State v. Cazes, 875 S.W.2d 253, 268 (Tenn. 1994).

[DELETED: V. THE JURY'S VERDICT]

VI. DISCRETION OF PROSECUTOR IN SEEKING DEATH PENALTY

The appellant argues that there are no guidelines or procedures to assist prosecutors in Tennessee in determining when to seek the death penalty. According to the appellant, because the prosecutors have unlimited discretion in this respect, the death penalty imposed in this case is arbitrary and capricious. This argument has repeatedly been rejected by our supreme court. See, e.g., State v. Hines, 919 S.W.2d 573, 582 (Tenn. 1995).

VII. DISCRIMINATION IN IMPOSITION OF THE DEATH PENALTY

The appellant also argues that the death penalty is imposed in Tennessee in a discriminatory manner based upon race, geography and gender. This argument has also been repeatedly rejected by our supreme court. See, e.g., State v. Brimmer, 876 S.W.2d 75, 87 (Tenn. 1994).

[DELETED: VIII. PROPORTIONALITY REVIEW]

CONCLUSION

Based upon the foregoing, the judgment of the trial court is affirmed, as is the sentence of death imposed by the jury.

JERRY L. SMITH, JUDGE

CONCUR:

NORMA MCGEE OGLE, Judge

JOHN EVERETT WILLIAMS, Judge